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# File No. O.I.P.(E.P.) 47 Pt. III

Legal DEPARTMENT

A BRANCH

Subject:—

OB 1715

Opinions under Indian Press (Emergency Powers) Act, 1931

(For previous ppr. pl. see pts. I & II)

E/17

File No. O.I.P.(E.P.)/47 Pt. III

Std. Sectt. Slip 24 B c.

1-A

III

| Sr. No. | Compilation No. | Subject | Pages |
|---|---|---|---|
| | | Opinions under the Indian Press (Emergency Powers) Act, 1931. | |
| 1. | ~~Cl. No. (731) 1-7-1947~~ | Section 4 (1) (b).<br>The Indian Penal Code. S. 124 A<br>Whether the article published in the issue of student dated the 23rd March 1947 under the heading "Imperialist Stone-throwers in action" is actionable | 1-2 |
| 2. | ~~C.No. 6(61) 23-6-1947~~<br>A.G.'s Opinion No.36/1947<br>~~C.No. 242 7-7-1947~~ | Section 4(1) (d)<br>The Indian Penal Code. S. 124 A<br>The Bombay public Security Measures Act, section 2 (1) (e)<br>Whether other action is open to Government in respect of an article in the issue of Kirat dated 11-6-1947 containing a mean scandalous and vilipertive attack against the Home Minister for the prohibitary order served on the editor on the editor of that paper under S. 2(1)(e) of the Bombay Public Security Measures Act 1947 | 3-10 |
| 3. | ~~C.No. 242 Conf'l. 9-8-1947~~ | Sections 5(1) and 9(1)<br>Return of Security deposits. | 11-12 |
| 4. | ~~C.No. 242 Conf'l 9-8-1947~~ | Sections 4(1), 5(1)<br>The Government of India Act, 1935,<br>Section 295<br>Return of security deposits. | 13-16 |

H.H.D.
D-3-48
C.5

1/15

Office of the R.I.A.

A criticism of the acts of the Police which represents one of the chief agencies of the Government will fall within the purview of section 124A of the Indian Penal Code if the natural effect of the words used is t infuse hatred or contempt of Government(see Satya Rajan Dakshi,56 Cal.1035) Clause(d) of section 4(1) of the the Indian Press(Emergency Powers) Act, 1931 is in terms similar to section 124A of the Indian Penal Code. The article in question describes the atrocities committed by the Pioneer Corps and the Bengal Armed Police/ in their campaign to crush the Tabhag movement in Dinang and those atrocities are so outrageous that an inference of bringing into hatred or contempt the Government ~~established~~ established in British India could be legitimately drawn provided the words used had that natural effect. But the article is couched in moderate language and no where any bitter criticism is levelled against Government. On the contrary the article contains mainly an attack on Mr. Dustin. The article ends by saying:

> "It is to protest against these atrocities of the British and against the daily hootings of peasants for tabhag all over Bengal that the B.P.S.F. called for anti repression week."

Consequently even if the article offends against clause (d)of section 4(1)it appears to be saved by explanation 3.

Sd/-

Remembrancer of Legal Affairs.

H.R.D. 8-5-56 C.A

U.O. to H.D. (Political), No. 6730 ,dated the 1st July 1947.

Office of the R.L.A

**Statement of the Case.**

The issue of "Bharat" dated 11-6-1947 contains an article under the caption "Government Servants disloyal to the Home Minister. Is the Home Minister disloyal to his own self?" which levels a mean scandalous and vituperative attack against H.M.(H). for the prohibitory order served on the editor under clause(e) of section 2(1) of the Bombay Public Security Measures Act, 1947, restraining him from publishing editorial notes, articles cartoons etc., of a communal nature. H.P.M. desires the R.L.A. to advise what other action is open to Government.

The most objectionable part of the article runs thus:

> "We say that the Home Minister is a traitor and is doing great harm to the country. He is a malicious and vindictive person. He wants to cover up his dark side. He wants to spread a dark curtain over all the dark talks full of disgrace of how he wrongly gives lifts to members of of his family and dependents and draws out the wealth of the country. And as we do not submit to him and act accordingly he has begun to wield the lash of power conferred upon him against us. We, therefore, openly challenge him that instead of resorting to the law giving him autocratic and one-sided power, give sanction for prosecution in any Court under section 153A of the Indian Penal Code relating to communal bitterness. We are ready to defend ourselves and expose all the hypocritical, partial, malicious and autocratic tactics of the Home Minister".

The passages underlined contain a personal attack on the integrity and character of H.M.(H), are couched in most filthy, offensive and objectionable language, and are clearly defamatory. An action for defamation would be sustainable. But it is doubtful whether H.M.(H) would care to prosecute the editor for defamation.

In his recent opinion No.271-Confl, dated 19-6-1947 the R.L.A. considered whether an attack on individual ministers would be sedition within the meaning of section 124A of the Indian Penal Code. The R.L.A. opined:

"As a result of the recent pronouncement of the Privy Council the Empere v.Sibnath Banerji(48B.L.R.1) Ministers may be regarded as officers subordinate to Governors. But even as such officers, Ministers cannot be said to be the Government established by law. By that expression is meant the person or persons collectively in succession who are authorised to administer Government for the time being. One particular set of persons may be open to objection and to assail them and to attack them and to excite hatred against them is not necessarily exciting hatred against the Government, because they are only individuals and not representative of that abstract conception which is called the Government. Individuals may come and go but the

~~go but~~ Government is supposed to remain. The individual is transitory and may be separately criticised"(per Battey J.in Emperor v. Bhaskar 8B.L.R 421). The abstract notion of Government is no doubt only reached by idealizing the concrete but it is the system of Government that section 4 contemplates and not the person who for the time being carry on the details of administration" (I.L.R. 39 Mad, 1085 at P. 1156). Consequently viewed as an attack on the individual Minster, H.M.(H), the article would not fall under section 124A of the Indian Penal Code and for the same reasons the article would not also come within ~~clause~~ clause(d)of section 4(1)of the Indian Press (Emergency Powers) Act, 1931.

No action uder clauses(a)to (d) of section 2(1) of the Bombay Public Security Measures Act, 1947,detaining or restricting the movements of the editor would be feasible unless by fresh acts he has given proof to satisfy Government that he is acting in a manner prejudicial to the safety the maintenance of public order or the the tranquillity of the Province or any part thereof. An order under sub-section (2)of section 2 requiring him to enter into a bond would not be also legally feasible now, even if the order made under clause(c) of sub-section(1) did not so require him to do.

As the matter, however, is important, the Advocate General is requested to favour Government with his opinion, immediately.

Sd/- D.V. Vyas

Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay , No.6683, dated the 28th June 1947.

M.R.D.
8-5-56
C.4

No. 36 of 1947.

Advocate General's Chambers,
High Court,
Bombay, 3rd July 1947.

U.O.N. to the Advocate General of Bombay.

No. 6683 dated the 28th of June 1947.

Subject:-

OPINION.

The passage appearing in the issue of "Bharat" dated the 11th of June 1947 is undoubtedly grossly offensive and objectionable, and an action for defamation would clearly be sustainable if instituted by H.H. (II). I agree with the opinion of the D.L.A. that no action can be taken under section 124(A) of the Indian Penal Code, nor under section 4 (1)(D) of the Indian Press Emergency Powers Act, 1931, though the latter is wider in its terms than section 124(A). This is a purely personal attack on a Minister. It has no relation to the system of Government, or Government as a whole, and it cannot be said that it is calculated to bring Government into hatred or contempt having regard to the authorities on the matter.

I also agree that steps cannot be taken under the Bombay Public Security Measures Act in regard to this article, since it cannot be said that it is prejudicial to the safety and maintenance of public order or tranquility of the Province.

Sd/- C.K. Daphtary
ADVOCATE GENERAL.

H.H.D.
8-5-56
C.4.

Office of the R.L.A.

H.P.M. desired the R.L.A. to advise "what other action is open to Government" in respect of an article in the issue of "Bharat" dated 11-6-1947 containing a mean, scandalous and vituperative attack against the Home Minister for the prohibitory order served on the editor of that paper under clause(e)of section 2(2) of the Bombay Public Security Measures Act, 1947. Although the article is couched in a most filthy, offensive, objectionable and defamatory language, the R.L.A. thought that it would not fall under section 124A of the Indian Penal Code or clause (d)of section 4(1) of the Indian Press(E.P.) Act, 1931, as it was an attack on an individual Minister as distinguished from the Government established by law in British India. He also thought that no steps could be taken under the Bombay Public Security Measures Act in respect of this article as it could not be said that it was prejudicial to the safety and maintenance of public order or tranquility of the Province. However, as the matter was important, the opinion of the Advocate General was sought on the the question. The Advocate General has given his opinion, a copy of which is hereto attached. He agrees that no action can be taken in respect of this article under section 124A of the Indian Penal Code or section 4(1)(d) of the Indian Press(E.P.) Act, 1931 or under the Bombay Public Security Measures, Act.

Sd/- D.V.V.

Remembrancer of Legal Affairs.

H.R.D.
8-5-96
C.A

H.P.M

Office of the L.A.

As pointed out by the L.A. in his opinion in the other case Government's prerogative of mercy cannot be availed of for the purpose of ordering or directing the refund of security deposited either under section 5(1) or under section 9(1) of the Indian Press(Emergency Powers Act, 1931. It would however be open to the Magistrate concerned to return the deposit if he is satisfied that the keeper of the press or the publisher of the newspaper, as the case may be, is not likely to offend again.

Secretariat of Legal Affairs.

U.O. to D.D.(Spl.) No.343-confl,dated the 9th August 1947.

H.H.D.
C.4

Office of the H.L.A.

It appears that after Government forfeited the deposit of Rs. 3000 under sub-section(1) of section 4 of the Indian Press (Emergency Powers) Act, 1931, Mr. Codse, Keeper of the Shri Shivaji Printing Press, Poona, was required to deposit with the District Magistrate, Poona, a sum of Rs. 5000 under section 5(1). It is now proposed to ask the District Magistrate to refund the said security. Secy. H.D. presumes that the Crown's prerogative of mercy will cover returning of securities. The H.L.A. is requested to advise whether it would be legally feasible for Government to direct the District Magistrate to return the security.

Under section 5(1) of the Indian Press(Emergency Powers) Act, 1931, the person making a fresh declaration in respect of the press could be required to make a deposit with the Magistrate before whom such declaration is made of security to such an amounts not being less than one thousand or more than ten thousand rupees as the Magistrate may think fit to require. It is clear from this provision that the furnishining of security is obligatory but it is within the discretion of Magistrate to fix the amount of security subject to the condition that such security should not be less than Rs.1000 and not more than Rs. 10,000. Section 13 provides that where any person has deposited any security under this Act and ceases to keep the press in respect of which security was deposited etc. he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security; and thereupon such security shall upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person. This is the only provision whereunder the security furnished under section 5(1) can be refunded; and the power to return it vests in the Magistrate. It appears that Government has no power under the Act to direct the District Magistrate to return the security to Mr. Codse, under nor will it be obligatory for the District Magistrate so to do unless and until Mr. Codse ceases to keep the press. There will however be no objection to the District Magistrate returning the deposit if he is satisfied that Mr. Codse is not likely to offend again.

It is true that the Crown enjoys the exclusive and inseparable right of granting pardon, either before or after conviction, and reprieves and these powers are regulated by section 295 of the Government of India Act, 1935.

P.T.O.

But this prerogative does not, it appears, extend to ordering the return of security deposited under an order validly issued by an authority in exercise of statutory powers vested in it as in the present case. Consequently the presumption made by Secy.H.D. does not appear to be correct.

sd/-

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.), No.342/Confl, dated the 9th August 1947.

H.R.D.
9-5-56
C.4